

Dangerous Waste Rule Amendment Public Workshop

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Rule Making Process and Timeline

- Sept 2013 – Ecology notice of proposed rule making
- Public outreach and informal comments accepted
- Aug 2014 – rules changes formally proposed
- Public hearing and official comment period
- Dec 2014 – Adopt new rules

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Notes:

- DW rules last amended June 2009.
- Fall 2013 - Ecology filed pre-proposal notice of rule-making activity.
 - Rule-making is normally a 1.5 year process.
 - Fall/winter - wrote draft rules.
- Draft rules available on [HWTR website](#).
 - Not official comment period now-Ecology interested in getting public input on rules (until March 31th).
 - Comment form available back table, and on website.
- Formally propose rule amendments August, then official hearing and comment period.
- Adopt new rules by end of year.

Overview of Rule Changes

- **Newer EPA rules:**
 - Academic lab rule
 - Import/export rule
 - Technical corrections and clarification
- **State-initiated rules:**
 - Technical corrections, edits, clarifications
 - Fuel/water exclusion and financial assurance rules
 - Revision to Chemical Test Methods Guidance

Notes:

- EPA rules-almost all are optional rules:
 - Meant to ease regulatory burden.
 - Correct errors and provide more clarity.
- State-initiated rules:
 - Includes updates to existing RCRA rules.
 - Adopting rules unique to WA, aka “state-only.”

2008 School Lab Rule

- Eligible Labs (Science, art, photo, etc.)
- Affects unwanted materials & clean outs
- Benefits in counting issues, designation, students
- Requirements
 - Unwanted material removal
 - Stock rooms
 - All labs on-site are in or out...not both
 - Notification, Container regulations, Training
 - Once waste leaves site, then all RCRA applies
- Lab Management Plan to implement the above

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Notes:

Unwanted material removal = 6mo &/or 55 gallons to CAA

Stock rooms = 1X/12mo.

All labs on site are in or out...not both

Notification, Container regs, Training

Leaving on site then all RCRA applies

Import/Export Rule

- Affects OECD countries – foreign policy
- For recycling HW, UW and SLABs, not disposal
- Adds export regs to SLABs
- Creates central EPA office for import/export
 - Better tracking (exception reports, notification to export & consent, confirmation of recovery)
 - Better recordkeeping
 - Prevents unqualified recyclers

RCRA Corrections Rule (Highlights)

- Approximately 93 corrections, omissions, and typos
- Manifests – rejected loads, exception reports
- Scrap metal in Table 1 – better redefines
- LDRs apply to recycled materials placed on ground (EPA oversight)

Fuel/Water Exclusion

- Fuels contaminated with draw water in tanks at fuel storage tank terminals when the contaminated fuel is to be reclaimed
- Draw water: rain/snow/precipitation entering fuel storage tanks unintentionally and mixing with fuel such that the mixture cannot be used as a fuel until the water is removed

Financial Assurance Rules

- “Sibling” corporations don’t meet “third-party” cost estimate requirements
- “Net Present Value” meaning clarification
- Adjust Tangible Net Worth requirement for inflation
- “Negative Assurance” reports substitute
- Update liability minimums for inflation
- Adopt rules for Corrective Action – same as closure/post-closure rules
- Fix various typographical errors

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Notes:

Changes to the financial assurance rules are actually a lot less complicated than they might seem at first.

1. Sibling companies: We are proposing that “sibling” companies not be considered “third-parties” for purposes of determining a financial assurance amount. The intent of the underlying regulation is to ensure the facility’s cost estimate and the resulting financial assurance amount fully captures all costs that might be incurred during facility closure. Although a related corporate entity might be able to perform closure for a lower cost, the financial assurance is intended to cover situations where the owner/operator is unable to perform the required closure activities. This regulation is based on the federal restriction on a parent or subsidiary corporation being the basis for closure cost estimate activities. This proposed change is intended to further ensure a true third-party cost by disallowing the use of cost estimates from sibling corporations. We have already incorporated this language into Agreed Orders and Consent Decrees for corrective action sites, so it is not totally new.

2. NPV definition: “Net present value” adjustments are already prohibited for financial assurance purposes. However, some facilities have confusion about what “in current dollars” means. This change merely clarifies that a cost estimate “in current dollars” means in today’s dollars (how much it costs today), not in discounted dollars (how much it will cost in the future).
3. TNW: The minimum tangible net worth amount established in the original federal regulation was \$10 million. This amount has never been adjusted for inflation by EPA. In 2004, Ecology adjusted the amount for inflation and increased the minimum to \$20 million. This proposed change would again adjust the minimum tangible net worth requirement for inflation. We do not anticipate any firms currently using the financial test or corporate guarantee option would be affected by this change.
4. Negative assurance: The mandatory “negative assurance” report required by federal regulations is no longer allowed by AICPA. Since accountants are not allowed to sign off on this mandatory document, EPA issued guidance in 1997 to use an “Agreed Upon Procedures” report instead. We are proposing to incorporate this guidance into a state rule.
5. Liability minimums: The minimum amounts established in the original federal regulation were \$1 million per occurrence and \$2 million annual aggregate. These amounts have never been adjusted for inflation by EPA. In 2004, Ecology adjusted the minimum net worth amount for inflation, but did not adjust the liability coverage minimums. This proposed change would again adjust the minimum coverage amounts for inflation. These amounts are specifically to cover bodily injury and property damage caused by a fire, explosion, or other accident at a TSD or recycling facility. Most facilities already have this coverage as part of their normal business insurance.
6. Corrective Action rules: We are proposing adopting financial assurance rules for corrective action. Although EPA previously issued proposed corrective action rules, the feds have never finalized this proposal. Instead, we operate on guidance. Our existing boilerplate documents incorporate the proposed language for financial assurance; this rule would simply incorporate that language into the regulations. The proposed language mirrors the closure/post-closure financial assurance rules, so facilities that have previously provided financial assurance for closure or post-closure are already familiar with the requirements.
7. Typos: There are a number of minor typographical errors and gender-specific references that are fixed.

Chemical Test Methods (CTM): **State-only Persistence**

Reasons for the change:

- CTM guidance - uncertain methods for determining state-only persistence
- Guidance contains criterion inconsistent with the Dangerous Waste Regulation
- Provide clarity on state-only persistence: total halogenated organic compound vs. total halogen concentrations

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Notes:

Reasons for the change:

- The CTM guidance document contains methods that may not fully provide the necessary information needed to determine state-only persistence.
- The guidance document contains criteria that are inconsistent with the Dangerous Waste Regulations.
- To provide clarity on state-only persistence, based on total halogenated organic compound vs total halogen concentrations in the waste stream.

Chemical Test Methods Proposed Changes

- Streamline the Test Methods :
 - Limit the suggested test methods to:
 - EPA SW-846 Test Methods 5050 and 9056
 - EPA SW-846 Test Method 9023
 - Remove the requirement for individual halogenated organic compound threshold
- Update Appendix 5 (Groundwater Monitoring List applicable in Washington State) with the current EPA suggested test methods

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Notes:

We will limit the suggested Test Methods for State only Persistence to two EPA SW 846 Test Methods:

1. SW Methods 5050 and 9056. Method 5050 is a sample preparatory method for solid waste and Method 9056 is the analytical finish for the determination of halide concentration in the waste stream.
2. EPA Method 9023 is to be used for the determination of total extractable organic halides (EOX) as Cl⁻ in solids. EOX is defined as the sum of those organic halides, which are extracted and detected by pyrolysis/microcoulometry under the conditions specified in this method. Extractable organic halides containing chlorine, bromine, or iodine are detected. However, fluorine containing species are not detected by this method. Polybrominated diphenyl ether (PBDE) such Deca-BDE if known to be present in the waste stream have very low solubility with ethyl acetate and Method 9023 may not be an appropriate test method without the use of an organic solvent with higher solubility for Deca-BDE.
3. These changes will make testing for waste designation less expensive, easier for generators, and provide more accurate results.

Special Waste Rule

- Special waste: subset of Dangerous Waste, lower toxicity, lower risk, state-only waste
- Proposal: transfer stations limited to 30 days for waste storage
- Tie special waste section to definition
- Reminder that special waste may be subject to DOT hazardous material requirements

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Notes:

- Special waste unique to WA.
- Typically, waste goes straight to solid waste landfill. Can be held at transfer station.
 - Proposing 30 day time limit at transfer station.
 - Wastes less likely to be dispersed from wind or rain.
- Special waste definition not in rule section. This change ties special waste exemption to the definition.
- Some special wastes may also be DOT hazardous materials. Provides reminder to ship according to DOT requirements.

“Independent” Professional Engineers

- Many rules require P.E. to certify TSD activities
- State requires P.E. to be independent in most cases
- Adding the “independent” clause throughout the rules
- These changes make this rule consistent throughout regulations

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Notes:

- Rationale: independent PE less likely to be unduly influenced.
- Gives public more assurance that bias is not a factor and that permitted facilities are meeting operational requirements.
- Includes modifying federal rules, which are incorporated by reference.

Post-Closure Permit Alternative

- Current: contaminated closed sites must obtain RCRA post-closure permit
- In lieu of post-closure permit RCRA allows states to use “Enforceable Documents”
- MTCA agreed orders is an enforceable document
- Clean-up sites with a final Part B permit can’t use enforceable documents

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Notes:

- Corrective action facilities in post closure currently must obtain post closure permit.
- Enforceable documents is an option, making use of MTCA authorities in lieu of RCRA permit.
- Only available to sites in interim status.

Other Minor Changes

- P and U Commercial chemical products – correct errors in state lists to match RCRA
- Removal of “Response to requests for public records” rule
- Allow electronic submittal of documents submitted to Ecology
- Revision of LDR treatment standards for carbamate waste constituents
- Clarifications on who can receive off-site dangerous waste

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Notes:

- P & U waste codes –identified errors in chemical names, waste codes, and CAS numbers.
- Following EPA lead, removed saccharin as listed dangerous waste. EPA determined saccharin doesn't meet criteria to be a listed HW.
- Public disclosure rule is outdated and more stringent than Public Records Act – could require Ecology to furnish records within 20 days, whereas the PRA doesn't give a specified time frame to supply records.
- New state law requiring state agencies to accept document submittals electronically. Ecology working on software that will provide verification of receipt and authenticity.
- No adequate quantitative test methods to determine numerical values for carbamate waste constituents. New rule allows use of technology-based treatment methods in addition to numerical test methods. Deals with pesticide production wastes.
- Rules do not clearly state what types of facilities are allowed to accept DW from off site. Three rule changes to clarify that only TSDs and DW recyclers and certain exempted facilities can receive DW from off site.
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More Questions? Comments?

- Provide input via comment form. Find at:
http://www.ecy.wa.gov/programs/hwtr/laws_rules/DWRuleMaking.html

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